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IN THE

Supreme Court of the United States

October Term, 1975

No. 73-1288

ALFRED DUNHILL OF LONDON, INC.,

Petitioner,

—against—

THE REPUBLIC OF CUBA and DANIEL SOLANO PINERA,
As Interventor,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS ON REARGUMENT

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October 1, 1975

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POINT I

There Is No International Law Issue In This Case; Hence This Court's Holding In *Banco Nacional* v. *Sabbatino* Is Not Relevant To This Proceeding.

We must keep in mind the issue before this Court in *Banco Nacional* v. *Sabbatino,* 376 U.S. 398, and what this Court held on that issue. The act of state doctrine (on which respondents rely herein) was not created by that decision. It dates, at least, from *Underhill* v. *Hernandez,* 168 U.S. 250, in 1897. Rather, this Court's holding in *Sabbatino* was prompted by the fact that the District Court, 193 F.Supp. 375 (S.D.N.Y. 1961) and the Court of Appeals,

307 F.2d 845 (2d Cir. 1962) had held that the doctrine was not applicable when the act of the foreign sovereign was a violation of international law.

This Court rejected that exception in cases involving the nationalization of alien property on grounds too familiar to require repetition at this point. We do not understand that the minority opinion of Mr. Justice White in his *Sabbatino* dissent, 376 U.S. at 459, the doubts suggested by Mr. Justice Powell in his concurring opinion in *First National City Bank* v. *Banco Nacional,* 406 U.S. 759, 773, and the questions raised by academic and other critics of the *Sabbatino* decision take issue with the act of state doctrine itself, but only with this Court's failure to make an exception in cases of violation of international law. Leigh, *The Supreme Court and The Sabbatino Watchers: First National City Bank* v. *Banco Nacional de Cuba,* 13 Va. J.Int'l.L. 33 (1972); Mann, *The Legal Consequences of Sabbatino,* 51 Va. L. Rev. 604 (1965); Stevenson, *The Sabbatino Case—Three Steps Forward and Two Steps Back,* 57 Am.J.Int'l.L. 97 (1963).

There is no violation of international law raised by the record; it follows that there is no occasion for reviewing the holding of *Sabbatino.*

On September 16, 1960 the Republic of Cuba directed the intervention[1] of the Cuban-owned tobacco companies. Up

[1] Throughout these proceedings, the words "intervention" and "nationalization" have been used interchangably. In Latin American law there is a considerable difference between them. Intervention is a device, utilized not only in Cuba but in most Latin American countries, by which a government receiver is appointed to take over, for a temporary period, industrial or commercial businesses which for some reason or other cannot continue to function. During the Revolution the Cuban Government sometimes nationalized domestic enterprises and sometimes intervened them. The tobacco companies were intervened in 1960 and were not nationalized for some time thereafter. Thus, intervention is an intermediate stage, at which no decision has been made as to the ultimate disposition of the enterprise.

to this point there is no question of international law raised, there having been no seizure of the property of any person not a national of Cuba.

The District Court held, and the Court of Appeals agreed, that the intervention, lawful in Cuba, did not give respondents the right to collect accounts receivable from importers in New York, under the doctrine of *Republic of Iraq* v. *First National City Bank,* 353 F.2d 47 (2d Cir. 1965), *cert. den.* 382 U.S. 1027. That case holds that acts of a sovereign will be given extraterritorial effect "only if they are consistent with the policy and law of the United States," 353 F.2d at 51. We have argued elsewhere that the *Republic of Iraq* case is inapplicable to this situation (see *Republic of Cuba* v. *Menendez,* No. 73-1287, petition for certiorari pending in this Court and *infra,* p. 9); we shall not repeat those arguments here except to note that a decision, yea or nay, on our contention ought logically to be made before this case is decided. If, as we contend, *Republic of Iraq* is inapplicable and the intervention decree was effective as against the accounts receivable, this petition must be denied since the funds in suit were properly paid to Cuba and cannot be the subject of a quasi-contractual claim by petitioner.

If, however, as the courts below held, the doctrine of *Republic of Iraq* is applicable, we move on to the next issue, namely, whether having voluntarily paid to respondents money which, 12 years later, the District Court held was due to the former owners, petitioner may now recover

The law authorizing intervention and the intervention decrees are not a part of the record on this petition but they were in the record in *Palicio & Co.* v. *Brush & Block,* 256 F. Supp. 481 (S.D.N.Y. 1966), *aff'd* 375 F.2d 1011 (2d Cir. 1967), *cert. den.* 389 U.S. 830. For the convenience of the Court we are printing them as appendices hereto.

that money. On *this* issue the *Republic of Iraq* case is not relevant, as the Court of Appeals held (J.A.23a, 24a). Cuba is not now trying to collect an asset located in the United States. It is seeking rather to hold on to an asset located in Cuba—an asset it claims on the basis of a typical act of state, its original intervention decree.[2]

Thus, this case primarily involves a dispute between a foreign sovereign and its nationals. All of the acts of the Cuban sovereign have been directed at its nationals and have only indirectly affected Dunhill. Indeed, Dunhill's predicament results from the disposition by the United States judiciary of the dispute between Cuba and its nationals.[3]

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[2] The act of state doctrine is applicable even as to property originally located outside the territory of the nationalizing country, when the property is subsequently reduced to possession without violation of law. See A.L.I., *Restatement Second, Foreign Relations Law of the United States,* (1965) § 43, p. 140.

[3] Dunhill's involvement in this dispute was far from involuntary or innocent. The courts below treated Dunhill's payments as payments made by mistake (J.A.24a, 55a). The record does not support such a finding. In September and October, 1960, when it made its payments, Dunhill knew that the Cuban tobacco companies had been intervened and that the Cuban owners had been replaced by government-appointed intervenors. They may not have known, at that time, the precise legal effect in the United States of such a takeover but neither did anyone else. Indeed, the legal effect of the intervention is not clear even now in view of this proceeding and the pending petitions for certiorari.

It would be much more accurate to say that Dunhill took a calculated risk. To have refused to pay or to have paid the former owners might have cut off its source of Cuban cigars just before the profitable Christmas season; to have paid the interventors ran the risk that it might be paying the wrong party. It chose the latter alternative, perhaps on the theory that the dollars in hand was worth the litigation likely to follow. We know of no equitable theory on which Dunhill should recover because it gambled on the result of a lawsuit and lost.

The Court of Appeals found "troublesome" the conduct of the owners and importers at meetings in New York immediately after intervention (J.A. 19a) but found that in any event the transmission of funds by Dunhill to Cuba was not payment of the debt to

For this reason there can be no international law question presented by Cuba's actions. The international law of nationalization is addressed to the sovereign's power to transfer ownership of property owned by an alien and all of the rules advanced by the courts and text-writers on that issue presuppose the alien's ownership of the property in question. See, for example, Amersingle, *State Breaches of Contracts With Aliens and International Law,* 58 Am. J. Int'l L. 881, 904 (1964); Friedman, *Expropriation In International Law* 157-58 (1953); Re, *Foreign Confiscations* 6 (1951). Here, there was no intent to divest Dunhill of ownership. There was never, in the eyes of Cuba, any property right in Dunhill to be divested. Indeed, by anyone's view, Dunhill's rights, such as they are, arise only by operation of law as formulated and applied by the United States courts in adjudicating the effect of Cuba's act of state. Surely such a refusal by the Government of Cuba to agree with the United States courts on a question of law affecting entitlement to property now within Cuba's own territory cannot be characterized as a violation of international law. Nor can it be thought that a nationalization of an *alien's* property contrary to international law occurs because the United States courts consider the intervention of a *national's* property contrary to United States public policy.

We have found no authority, and the petitioner cites us to none, even remotely suggesting that an international law question is presented in these circumstances. On the contrary, it is settled that measures directed against a national which indirectly injure an alien, including an alien

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the former owners, in the sense that it provided a defense to the former owners' claim. Whether that is so or not can await the disposition of the importers' cross-petition for certiorari (*Saks & Co.* v. *Republic of Cuba,* No. 73-1289).

tied by contractual relations to the national, do not present an international law question. See Whiteman, 8 *Digest of International Law* 933 *et seq.*; *Dickson Car Wheel Company (U.S.A.)* v. *United Mexican States*, IV Reports of International Arbitral Awards 681 (1931); *Claim of European Mortgage Series B Corp.*, Foreign Claims Settlement Commission, Decisions and Annotations 246 (1959).

What, then, is the international law issue on which petitioner relies?

This action was instituted in 1961 and has been in active litigation since 1967. Until August 15, 1975 when petitioner filed its supplemental brief it had never suggested that international law had been violated by the respondents. Even now it is difficult to understand from petitioner's brief why it thinks that there is an international law question to be considered. We can only assume that counsel has interpreted this Court's order directing reargument as an instruction to find and argue an international law issue even if none was raised by the record. This cannot be an accurate construction of this Court's order. We respectfully suggest that on this reargument the petitioner should have conceded in all candor that it did not allege any violation of international law and that therefore there was no occasion for a review of *Sabbatino*.[4]

As we read its brief, petitioner argues, first that it has been the victim of discrimination (Pet. Br. 5, 15-17), and

[4] Petitioner's counsel may have been somewhat embarrassed by the position in which they thought they had found themselves. Up to page 7 of its brief petitioner does in fact argue that there is no international law issue involved in the case. At page 8 and thereafter petitioner argues that "if . . . the remarks of Cuba's counsel were sufficient proof of a separate and independent act of state" then there are international law issues to be considered. We do not argue that there was a "separate and independent act of state" but even if there was, that fact could not have created international law issues where none had existed before.

second that the act of state doctrine should not be available at all in an "ordinary commercial transaction" (Pet. Br. 9-15). We will consider these two arguments.

1) No allegation of discrimination was made in the District Court, in the Court of Appeals or in this Court at the original argument last December. It is a bit late in the day to raise such critical allegations. We are not told and we do not know who has been discriminated against or what conduct of the respondents constituted such discrimination. And, as might be expected in such circumstances, there is nothing in the record to support petitioner's unspecified charges. There is no indication that other importers in the United States or elsewhere in the world were treated more favorably than petitioner.

This case is a far cry from the situation in *Sabbatino* in which the District Court and the Court of Appeals found that the conduct of the Cuban Government was discriminatory and retaliatory. That finding (with which we have taken issue from the beginning) was based on the wording of Public Law 851 and Executive Power Resolution No. 1 which directed the nationalization of certain United States-owned enterprises in Cuba. *Banco Nacional* v. *Sabbatino*, 193 F.Supp. 375, 382 (S.D.N.Y. 1961); 307 F.2d 845, 849 (2d Cir. 1962). There are no analogous decrees in this case; the only decree in question is the one which directed the intervention of 51 Cuban tobacco companies but which did not even purport to affect property of a national of the United States. See Appendix, *infra*.

We will not attempt to raise and dispose of still other international law arguments which have *not* been made by the petitioner. In an adversary legal system such as ours, cases should not be decided on the basis of straw men set up and disposed of by the parties to a lawsuit. In any event, we see no substantial international law question in this case.

If this Court believes that significant international law issues are raised by this record, and that those issues are best resolved in this litigation even at this late date, then this case should, at most, be remanded to the District Court for a determination of those issues in the usual course and upon a proper record. In light of the length of time we have been litigating this matter, we view this prospect without enthusiasm, and it may be that petitioner would be barred by the passage of time from raising such issues, but certainly new issues ought not to be raised and decided without a record and without the benefit of lower court decisions.

2) There is no relevance in petitioner's argument that the act of state doctrine is not applicable to "ordinary commercial transactions." We do not agree that the act of state doctrine does not apply to commercial transactions but find no need to argue the point here. It is, of course, absurd to characterize this as an ordinary commercial controversy. It arose, not out of normal international trade, but out of an intervention and it is the intervention which is the act of state, not the repudiation of a commercial debt. Further, the obligation on which Dunhill sues is not a commercial debt at all, but arises from the complex of decisions made by the courts below on the act of state doctrine, the law of payment, the law of quasi-contract and other issues.

As is well known, Cuba's act here was a part of a large scale reorganization of the economic, political and social structure of the government. The act of state with which we are concerned was not directed at Dunhill at all; it was directed at the former owners (and 47 other companies) only in the sense that they, like all other private producers in Cuba, were to be integrated into a new socialist system. It was by no means a commercial transaction; neither

should it have shocked the conscience of this Court. It was done out of consideration for the welfare of the people of Cuba whose interests were paramount in the eyes of the Government.

Cuba here was intervening a going business with overhead expenses to pay, payroll to meet, supplies to purchase and other obligations to satisfy. All of the assets of any going enterprise, including accounts receivable located abroad, are normally called upon to meet such expenses and that is exactly what happened here. The interventor received payments from importers, in the normal course of the operation of the enterprise, which continued without interruption.[4a] Petitioner concedes that Cuba had the right under international law to nationalize (and *a fortiori,* to intervene) the property of its citizens with or without compensation (Pet. Br. 7). In the case of a going business whose principal activity involves the export of a manufactured product, that right is a meaningless one unless it includes funds due to it from abroad. Indeed, in the case of an enterprise (like Cuba's cigar industry) which lives mostly on exports, a major portion of its liquid assets may well, at any time, consist of accounts receivable from abroad. The accounts receivable were not the personal property of the owners of the business, readily separable from the other assets; the were a part of the entity intervened.[5]

A second element in this case relates to the violation of Cuba's Currency Control Regulations. The Regulations in effect during the period covered by this complaint provided that when a Cuban exporter received payment in foreign

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[4a] In fact, checks mailed from New York a day or two before intervention were received by the interventor a day or two after. Schedules attached to Court Ex. 1.

[5] No such considerations were present in *Republic of Iraq, supra.*

currency, it was "required to deliver to the Currency Stabilization Fund, to be exchanged at par for national currency, the dollars representing the price of such exportation . . . within three days following the date of collection thereof." Par. First, Instruction No. 11 of November 3, 1959. The owners, of course, understood when they sold their products that they would be governed by the regulations; they had been operating pursuant to its terms for over a year, and hence they entered into the contracts in question with the expectation and intent that they would get pesos, not dollars (Trial Transcript, pp. 609, 738, 741). By the decision of the courts below they got a windfall, and Cuba is deprived of the currency it would have received from the transaction.

There is nothing in these regulations repugnant to the public policy of the United States; on the contrary, the regulations are typical of similar regulations all over the world.[6] The court below makes much of the fact that payment was, under the contracts of sale, to be made in dollars, not pesos (J.A. 17a). But every contract is made subject to law; the Currency Control Regulations are a part of the law of Cuba and the contracts must be interpreted consistently therewith.

This Court must not be blind to the political and economic considerations present here. Cuba is an agricultural

[6] The United States currency control regulation at issue in *Sardino* v. *Federal Reserve Bank*, 361 F.2d 106 (2d Cir. 1966), *cert. den.* 385 U.S. 898, is much more inequitable in its operation than the Cuban Currency Control Regulations under consideration here. By the United States regulations Cuban citizens are deprived of their property without compensation; the Cuban Regulation merely specified the currency in which payment was to be received. The United States regulations were justified on the ground that the interests of the United States outweighed the interests of the plaintiff in that case. Can it be said that the interests of Cuba are any less important?

country and can survive only if it exports its products under such conditions that it can purchase manufactured goods. To do this it needs hard currency, and the currency regulations are designed to accomplish this purpose. Realistically speaking there are three parties to the sale of Cuban goods in international trade: the purchaser of the goods, who gets the product; the seller of the goods, who gets pesos; and the banking system of the exporting country, which gets the hard currency.

For these reasons, petitioner's argument that the rule of the law advocated by respondents in this case will have "an impact on international trade [which] would be disastrous" (Pet. Br. 10) has no foundation at all. The decision of this Court need be no broader than the circumstances require, and accordingly need not consider the effect of the act of state doctrine on commercial transactions.

Further, even a broad reading of the act of state doctrine in this case would not affect international trade. Cuba, like most countries, cannot survive without international trade. It is that fact, rather than any rules of law relating to act of state, which impel Cuba and all other countries to honor their commercial obligations. Cuba has developed an extensive foreign trade[7] in the past 15 years and persons dealing with it evidently are not perturbed by the fear that Cuba, acting on the Dunhill precedent, will repudiate its commercial obligations.[8] Such a course would be suicidal.[9]

[7] "In 1973, exports [from Cuba] were reported to have risen 58% to U.S. $1,264 millions and imports 21% to U.S. $1,561 millions. . . ." Pick's Currency Yearbook, 1974, p. 150.

[8] Dunhill's affiliated companies are importing cigars from Cuba in large numbers for sale in Canada and England, not deterred in the slightest by the horrors invoked by the petitioner.

[9] Even if the act of state doctrine does not apply here, the case must still be resolved on the merits. The elimination of the

POINT II

If Relevant, The Decision Of This Court In *Banco Nacional* v. *Sabbatino* Should Be Reaffirmed.

If the *Sabbatino* decision is at all relevant to this proceeding it should be reaffirmed; if any decision of this Court requires review it is *First National City Bank* v. *Banco Nacional,* 406 U.S. 759.

A.

Every year that has passed since Mr. Justice Harlan wrote his opinion in *Sabbatino* has provided fresh evidence of the wisdom and prescience of that opinion. There was good cause, in 1964, for this Court to have stayed out of the worldwide controversy over the international law of nationalization. There is even better reason for the Court staying out of that controversy now. The "disagreement as to relevant international law standards" noted by this Court in its *Sabbatino* decision (376 U.S. at 398) has deepened and become more sharply defined in the years since. Nor is that all. Increasingly, the position of the Executive Branch has been in the minority and is at the present supported by only a few nations. If this Court should be required to declare the applicable law and if it is to be guided (as it must be) by the world consensus on the subject, it will be constrained to take a position contrary to that of the Executive Branch. Such a result cannot help but embarrass the Executive Branch in its dealings with

act of state doctrine from a controversy does not result in automatic judgment for either party. It merely opens the way to the consideration of the merits, which, in this action, are raised by the pending petitions for certiorari (*Republic of Cuba* v. *Menendez,* and *Saks & Co.* v. *Republic of Cuba, supra.*

the rest of the world.[10] Whatever the Executive Branch may think of this possibility,[11] this Court cannot be put in a position in which its decision on the law will adversely affect the international political stance of the United States.[12]

In 1962, the General Assembly of the United Nations had before it a draft resolution which declared that expropriation or requisitioning of private property was lawful if based on national interest. The draft further provided, in paragraph 4:

> "In such cases [of nationalization] the owner shall be paid appropriate compensation, in accordance with the rules in force in the state taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of

[10] That point may already have been reached at the District Court level in *Banco Nacional* v. *Chase Manhattan Bank,* S.D.N.Y., 60 Civ. 4663, as a consequence of this Court's opinions in *First National City Bank* v. *Banco Nacional de Cuba, supra.* See *infra,* pp. 21, 22.

[11] On page 8 of its brief, petitioner refers to the decision of this Court in *First National City Bank* v. *Banco Nacional, supra,* and particularly to the position taken by the Executive Branch in that case. We remind the Court that for petitioners to prevail respondents are requesting an application of the *First National City Bank* case and of the principles set forth in Mr. Stevenson's letter. The decision of the District Court disregarded the Stevenson letter, leading to the reversal in the Court of Appeals which is here under consideration. We would like this Court to reconsider its decision in *First National City Bank,* but such a reconsideration is by no means necessary in order for us to prevail on this petition.

[12] The problem is becoming more not less serious as the pace of nationalization increases. The State Department's *Report on Nationalization, Expropriation and Other Takings of U.S. and Certain Foreign Property Since 1960* reports that 34 "noncommunist" countries have nationalized foreign-owned assets and that the trend has been rising since 1960. Bureau of Intelligence and Research, Research Study RECS-14, Nov. 30, 1971; XI Int'l Legal Materials 84 (Jan. 1972). See also annex to Report of Economic & Social Council, U.N. Gen. Ass. Document A/9716, 20 Sept. 1974.

> compensation gives rise to a controversy, national jurisdiction should be resorted to. Upon agreement by the parties concerned, settlement of the dispute may be made through arbitration or international adjudication." U.N. Gen. Ass. Off. Rec. 17th Sess. A/5344/Add. 1, 12 December 1962 at 3.

Two amendments were proposed: First, to insert a sentence providing that the General Assembly "confirms the inalienable right of peoples and nations to the unobstructed execution of nationalization, expropriation and other essential measures aimed at protecting and strengthening their sovereignty over their national wealth and resources"; second, to replace the second sentence of the committee draft with the following: "The question of payment of compensation to the owners shall in such cases be decided in accordance with the national law of the country taking those measures in the exercise of that sovereignty" (*id.* at 7). Two roll call votes were taken. On the first amendment the vote was 30 to 30, with 34 nations abstaining (*id.* at 15). The second amendment was rejected by a vote of 39 to 28, with 21 abstentions (*id.* at 16). As everyone understood at the time, the language of the Resolution that was passed (Res. 1803) begged the question, since it left open the sharply disputed issue as to just what was required by international law. And it was equally clear that a large segment of the international community preferred some other formulation of their rights and duties.

The sharp and close division that had developed in the General Assembly presaged further changes. In the years following the adoption of Resolution 1803, the United Nations not only continued but increased its interest in the matter. And as new nations emerged from their colonial or quasi-colonial status, so the law developed and changed. Today we have reached the point where it may reasonably

be said that there is a consensus among the nations of the world as to the law of nationalization—but that the United States, together with a small handful of other capital exporting nations, has not accepted that consensus. If there ever was a situation where participation of this Court would be dangerous to both the national interest and the Court, this is it.

It would be tedious to trace all of this development in the United Nations since 1964, but a few of the high points may be noted. On October 19, 1972 the Trade and Development Board of UNCTAD (United Nations Conference on Trade and Development) adopted a resolution which again recognized the sovereign right of all nations to nationalize their resources and then proceeded to resolve that:

> "in the application of this principle, such measures of nationalization as States may adopt in order to recover their natural resources are the expression of a sovereign power in virtue of which it is for each State to fix the amount of compensation and the procedure for these measures, and any dispute which may arise in that connection falls within the sole jurisdiction of its courts, without prejudice to what is set forth in General Assembly Resolution 1803 (XVII)." U.N. Document TD/B/421, 5 Nov. 1972; XI Int'l Legal Materials 1474 (Nov. 1972)

On February 5, 1974 the General Assembly, again referring to its Resolution 1803, proceeded to affirm

> "that the application of the principle of nationalization carried out by States, as an expression of their sovereignty in order to safeguard their natural resources, implies that each State is entitled to determine the amount of possible compensation and the mode of payment, and that any disputes which might arise should be settled in accordance with the national legislation

of each State carrying out such measures." U.N. Gen. Ass. Document A/RES/3171 (XXVIII) 5 Feb. 1974; XIII Int'l Legal Materials 238 (Jan. 1974).

This resolution was adopted by a vote of 108 to 1 with 16 abstentions. The abstainers included the United States, France, Belgium, Italy, Japan, the Netherlands, Norway, Portugal and South Africa; the sole dissenting vote was cast by the United Kingdom.

During the year 1974 the United States moved from a position of abstention to a position of active opposition to the views of the vast majority of the members of the United Nations who, in turn, drew even farther away from the traditional position of the United States. This culminated in the Charter of Economic Rights and Duties of States adopted by the General Assembly on January 15, 1975. The most controversial article of that Charter was Article 2(c) which reads as follows:

"2. Each State has the right:

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(*c*) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means." U.N. Gen. Ass. Doc. A/RES/3281 (XXIX), 15 Jan. 1975; XIV Int'l Legal Materials 251, 255 (Jan. 1975)

In the course of debate several amendments were offered, the most important of which was submitted by the United States and 13 other nations, proposing to substitute for the language in Art. 2(c) a provision that "each state has the right . . . to nationalize, expropriate or requisition foreign property for a public purpose, provided that just compensation in the light of all relevant circumstances shall be paid." This proposal was defeated by a vote of 87 to 19 with 11 abstentions. The text above set forth was then adopted by a vote of 104 to 16 with 6 abstentions.[13] XIV Int'l Legal Materials 265 (Jan. 1975).

It is not only the United Nations which has taken a position in opposition to that of the United States. The Third World Nations, which have formally styled themselves "The Non-Aligned Powers" (originally known as the "Group of 77") have been holding international conferences for the past few years to consider problems of particular importance to them including, of course, problems arising out of the international law of nationalization. The Fourth Conference of the Heads of State of the Non-Aligned Countries, held in Algiers in 1973, resolved that:

"Any infringement of the right of effective control by any State over its natural resources and their exploitation by means suited to its own situation, having respect for the ecological balance, including nationalization and the transfer of property to its nationals, is contrary to the aims and principles of the United Nations Charter and hampers the development of inter-

[13] In addition to the United States, negative votes were cast by Austria, Belgium, Canada, Denmark, France, Federal Republic of Germany, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Spain, Sweden and the United Kingdom. Australia, Barbados, Finland, Israel, New Zealand and Portugal abstained. Every Latin American country, every African country and every Asian country except Japan voted in favor of the Resolution.

national cooperation as well as the maintenance of international peace and security.

The Conference gives its unreserved support to the application of the principle that nationalization carried out by States as an expression of their sovereignty, in order to safeguard their natural resources, implies that each State is entitled to determine the amount of possible compensation and its mode of payment and that any disputes which might arise should be settled in accordance with the national legislation of each State." Documents of the Fourth Conference of Heads of States of Non-Aligned Countries, U.N. Document A/9330, p.67

International meetings of lawyers have from time to time also directed themselves to the same problem. The International Association of Democratic Lawyers at its Ninth Congress held in Helsinki in 1970 adopted a resolution declaring that the exercise of the right of nationalization could not be subject to any conditions except that provided for in national legislation and that the only competent tribunal to deal with conflicts between states and investors were those of the state in which the capital was invested. And the same organization at its Tenth Congress held in Algiers in 1975 adopted a report which said, among other things:

"b) It cannot be said that the classical standard of 'prompt, adequate and effective compensation' which moreover was never universally accepted even by the western countries, was ever a universally-accepted principle in International Law. The question of compensation is a matter of domestic jurisdiction of the nationalising country as is emphasized by the Charter of the Economic Rights and Duties of States. The domestic tribunals of a state have exclusive jurisdiction in disputes concerning nationalisation, including compensation, and the attempt by western countries to submit these disputes to international arbitration must be discouraged as a limitation on the right to nationalise."

• • •

"Cases involving the nationalisation of alien property have come before the courts of western countries, involving property which has been nationalised. In deciding those cases, the courts have had recourse to international law, but the law was applied according to the old rules designed primarily to protect the interests of investors in the underdeveloped countries of the pre-1945 era. And so they have held nationalisation to be illegal on the grounds that it has been carried out without 'prompt, adequate and effective compensation', or that it has been 'discriminatory or retaliatory'. Iran, Indonesia, Cuba, Chile, Libya and other countries have been involved in such litigation and the threat of legal action by the former owners of nationalised property has impeded the trade and commerce of developing nations.

It therefore becomes important to find means for bringing to the attention of these courts, in a forceful and authoritative fashion, the fact that most of the nations of the world do not accept any version of international law which places restrictions on the right to nationalise." [14]

And finally, a meeting of the Association of American Jurists held in Panama in June, 1975 passed a resolution which reads in part as follows:

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[14] Copies of the I.A.D.L. Resolution, and of the Resolution of the Association of American Jurists, *infra* have been deposited with the Library of the Court and have been provided to opposing counsel.

"2.2 The State that nationalizes through a normal exercising of its sovereign authority is the only element capable of resolving the question of whether or not to pay compensation, and if so, how much and in what form. This process will be developed according to the laws of the State. The pretension of demanding 'prompt, adequate and effective' or 'just and proper' compensation—which some legislatures and imperialist governments expect as compensation for expropriation, planning to make this a rule of International Law—does not fall within the legal principles provided for nationalization.

2.3 In all cases of conflict over compensation that arise between the State that chooses to nationalize and the private owners affected by said nationalization (even when foreign), resolution should be given according to the laws and courts of the State that chooses to nationalize."

It might reasonably be argued that the effect of the adoption of the Charter of Economic Rights and Duties of States is to make the conclusion in *Sabbatino* a rule of international law insofar as it holds that the domestic courts of the United States may not pass upon compensation claims against other nations arising out of the nationalization of property owned by aliens. But we need not go so far at this point. This Court in its *Sabbatino* decision arrived at the same solution based upon our own constitutional system and the doctrine of the separation of powers. This is fortunate; otherwise this Court would be catapulted into the midst of a wide-spread international controversy as to the substantive law governing compensation in cases of nationalization and, as has been pointed out above, the Executive Branch is in a small minority on that question of substantive law.

B.

Quite aside from the recent developments in the international law as recited above, grave difficulties are encountered when the *Sabbatino* rule is discarded. The situation in *Banco Nacional* v. *Chase Manhattan Bank*, U.S.D.C., S.D.N.Y., 60 Civ. 4663, pending at the District Court level in New York, is illustrative.

Following this Court's decision in *First National City Bank* v. *Banco Nacional, supra,* and the subsequent Court of Appeals decision holding that Cuba's conduct in nationalizing the property of the United States banks in Cuba violated international law, *Banco Nacional* v. *First National City Bank,* 478 F.2d 191 (2d Cir. 1973), the *Chase* case came on for trial in the Southern District of New York. *Chase* is identical with *First National City Bank* except that the amount of money for which Banco Nacional is suing is much greater and there is a substantial issue as to the amount of the excess due to plaintiff over the amount of the counterclaim—an excess which this Court agreed in *First National City Bank* belonged to Banco Nacional. To determine the amount of that excess it became necessary to determine how much compensation Chase was entitled to on its counterclaim, under international law.

Never in this country, or, so far as anyone can determine, in any country, has a court been called upon to determine how much compensation is due under international law to a company whose property has been nationalized. The stated position of the United States State Department has traditionally been that the owner of the property is entitled to compensation which is "prompt, adequate and effective." See, for example, the *United States Statement on Economic Assistance and Investment in Developing Nations,* Jan. 19, 1972, printed in XI Int'l Legal Materials 239, 241 (Jan. 1972); also 71 Dept. State Bulletin 477,

481 (1974). But it has long been recognized that in fact international law (as manifested by the practice of nations) recognizes no such standard. See, for example, Lillich, *The United States-Hungarian Claims Agreement of 1973*, 69 Am. J. Int'l L. 534, 557 (1975); Dawson & Weston, *Prompt, Adequate and Effective: A Universal Standard of Compensation?*, 30 Fordham L.Rev. 727 (1962); Friedmann, *National Courts & the International Legal Order*, 34 Geo. Wash. L.Rev. 443, 452-454 (1966); Nicholson, *The Protection of Foreign Property Under Customary International Law*, 6 B. C. Ind. and Com. L.Rev. 391, 401 (1965); Wesley, *Establishing Minimum Compensation Criteria for Use in Expropriation Disputes*, 29 Vand. L.Rev. 939 (1972); Weigel & Weston, *Valuation Upon the Deprivation of Foreign Enterprise: A Policy-Oriented Approach to the Problem of Compensation Under International Law*, 1 The Valuation of Nationalized Property in International Law, 3, 8 (ed. Lillich, 1972). The District Court is thus faced with the prospect that the *Sabbatino* decision was designed to avoid—namely, the possibility that its decision on the international law of compensation will be in conflict with the political stance of the Executive Branch.

CONCLUSION

We have in this brief confined ourselves to the issues raised by the Court in its order directing reargument and have not repeated all of the contentions argued by us at the October, 1974 Term of this Court. The Court will, of course, understand that we are not waiving any of the arguments that were made then. We still urge, as we did then, that no intelligent disposition can be made of this complex litigation except by consideration of the issues still pending in the petition and cross-petitions for certiorari Nos. 73-1287 and 73-1289. Logically therefore the Court should either dismiss all of the petitions or hear all of them.

Isolation of the single issue raised by the petition now under consideration will result in a distortion but even then a decision on this issue must be made in favor of the respondents. The Court of Appeals was quite correct in holding, first, that this was an act of state and second, that *First National City Bank, supra*, at the very least prohibits an affirmative judgment in favor of petitioner against respondents. We respectfully refer the Court to the briefs filed on the original petition for certiorari.

One final word. If this Court feels that a review of the holding in the *Sabbatino* case is appropriate, we respectfully suggest that this is not a good case for such a review. There are other cases close behind in which an opportunity will be given to review that decision on a record which raises, in a more precise form, the legal issues presented by *Sabbatino*.

For the reasons previously stated, the Writ of Certiorari was improvidently granted and should be dismissed. Alternatively, the judgment of the Court of Appeals should be affirmed.

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October 1, 1975

APPENDIX

APPENDIX

(CUBAN LAW NO. 647)

MINISTRY OF LABOR

I, OSVALDO DORTICOS TORRADO, President of the Republic of Cuba, do hereby make known that the following law has been enacted by the Council of Ministers and approved by me, to wit:

WHEREAS it is the duty and inherent function of the Government to regulate the economic relations between the different production factors of the Country, preventing any activity which might directly or indirectly disturb its economic stability.

WHEREAS the Revolutionary Government is determined to insure a normal operation of all work centers, thereby also insuring the production of the staple goods and commodities indispensably needed by the population and, incidentally the subsistence of the Nation's sources of labor employment and the effective development of its economy.

WHEREAS the foregoing considerations make it advisable for the Government to contribute to the reorganization and administration of the business concerns that are not operating with the required regularity, so as to insure their efficient operation, the maintenance of their production levels, and the development, to the extent possible, of the respective work centers.

WHEREAS it is also a necessary function of the Government to mobilize whatever resources may be necessary for a practical solution of the financial problems of these enterprises or businesses that require such assistance,

provided it will redound to the benefit of the national production and of the workers involved.

WHEREAS whenever the Government applies any funds of the State for the benefit of a private business it ought to receive adequate compensation for such accommodation consisting of the reimbursement of the funds so used, plus interest, and a share of the earnings or profits of the business so benefited, in the proportion which such contribution or investment bears to the amount representing the actual worth of the concern.

NOW, THEREFORE: In pursuance of the powers conferred upon them, the Ministers of the Cabinet, in Council assembled, have resolved to enact the following

LAW No. 647

ARTICLE 1. The Minister of Labor is hereby authorized to provide for the seizure (intervention), whenever he shall deem it necessary, of the work centers or enterprises at which the normal production rate is ostensibly altered.

ARTICLE 2. The Minister of Labor shall exercise the authority conferred upon him by the foregoing Article One, in the following cases:

a) Lock-out or temporary or permanent closing which results in a stoppage of the work center involved.

b) Serious labor conflicts.

c) Mass dismissals of workers.

d) Non-compliance with resolutions of the Courts of Justice, or with awards or resolutions issued by the Minister of Labor in connection with labor conflicts.

ARTICLE 3. The Minister of Labor, in ordering the seizure (intervention) of a work center, shall provide therefor in a duly explained resolution wherein a clear statement of the causes giving occasion thereto shall be included, together with the name of the Official (Interventor) designated to take possession of the firm, and the powers vested in him.

The same resolution shall specify the salary to be paid to such Official (Interventor) during his tenure of his office as such.

ARTICLE 4. The seizures (interventions) ordered by the Minister of Labor in pursuance of this law may not last for more than six months. Provided, however, that if an extension of this period should be necessary in order to accomplish the purposes for which the seizure was originally ordered, such action will require an Executive Order of the President of the Republic, which will be issued on the recommendation of the Minister of Labor, and the duration whereof may not exceed six months.

ARTICLE 5. The "Interventors" designated hereunder shall be vested with all the powers required to manage and direct the concern or enterprise (work center) covered by the respective seizure resolution, and all the authority regularly exercised by its executives; wherefore they shall be subrogated to the standing, powers and privileges of the respective employer, without thereby precluding the specification, in the resolution providing for the intervention and designating the Interventor, of the scope of the functions and authority of the latter.

ARTICLE 6. It is hereby prohibited to close, temporarily or permanently, any enterprise or work center without

prior authorization of the Minister of Labor. The physical and corporate persons who, as owners or holders under any other authority of any enterprise or work center, believe it to be best for their interests to close such enterprise or work center, shall first apply for the required authorization to the Minister of Labor, who may, within the thirty days next following the filing of such application, either comply therewith or provide for the seizure (intervention) of the work center involved, on the terms and conditions provided for in this law.

Once the thirty day period referred to in the above proceeding paragraph shall have elapsed, the responsibility of the employer in the case insofar as the obligation hereby imposed on him is concerned shall be considered saved, and he may then proceed as per his application.

Article 7. In all cases where judicial proceedings are started for the bankruptcy or suspension of payments of any commercial or manufacturing concern which is a work center, the Judge shall so notify immediately the Ministry of Labor on the start of the proceedings, suspending further action for a period of thirty days.

The Minister of Labor may, within the time mentioned in the preceding paragraph, order the seizure (intervention) of the industry or business, immediately notifying the Court handling the matter, in which case the proceedings will remain suspended until the time for which the seizure (intervention) has been ordered, or its extension, as the case may be, has elapsed.

If fifteen days elapse without any seizure (intervention) having been ordered, or prior thereto, the Minister of Labor notifies the Judge of his intention not to seize the work

center, the proceeding will be continued through all its steps as provided by law.

Article 8. In cases where it be necessary to obtain financing of any kind for the purpose of developing the industry, the Interventor shall pally [sic] therefor to the Minister of Labor, who shall provide it, if he deems it beneficial, through Banco Nacional de Cuba, the Banfaic, the Bandes or any other state or private or quasi state institution.

In cases where it is not possible to obtain the required financing from the institutions referred to in the preceding paragraph or if the pressing nature of the matter so requires it, the Council of Ministers, on motion of the Minister of Labor, may grant the required credits to the extent necessary to maintain the normal operation of the enterprise or business.

Whenever the State contributes with its own funds in accordance with the provisions of this article, it may choose:

a) To participate in the profits of the enterprise in the part thereof corresponding to the capital contributed in relation to its total capital, in which the contribution of the State will be included.

b) To consider itself as a privileged creditor, the company or business that has received the State contribution being obliged to repay the same out of its profits, and the pending balances bearing interest at the rate of 6% per annum.

In cases where the State chooses to be a partner in the enterprise, it will be represented thereat by the person appointed by the Industrialization Department of INRA, which appointment shall be made in accordance with the

powers vested by the law creating the Institution in question.

Article 9. The seizures (interventions) which, pursuant to this law, may be ordered by the Minister of Labor shall cease once they have accomplished the purpose sought, or when the crisis that caused it has been overcome, and, in the last instance, upon the expiration of the time ordered for its extension.

Once the intervention ordered under the terms of this law has ended, the Interventors shall be required to render a detailed account of their activities to the Minister of Labor within fifteen days counted from the day after than on which they have ceased as such interventors, which time may be extended for fifteen more days for just cause.

Article 10. Without prejudice to what is provided by this law, the person who orders the temporary or definitive closing down of any enterprise or work center without fulfulling the provisions of Article 6 shall be punished with a fine of 31 to 180 quotas or arrest for from 31 to 180 days, or both penalties, the matter being brought before the Correctional Judge of the district in which the business is located. The same penalty will be incurred by the Interventors who fail to render an account of their activities within the period granted therefor, and its extension, if any.

Transitory Provisions

The bankruptcy or suspension of payments proceedings that are being processed when this law is promulgated shall be suspended for a period of fifteen days at the step in which they may be, with notice to the Minister of Labor for the purposes provided for in Article 7; such cases to be

continued if within that time the seizure (intervention) is not ordered and the matter is referred to the Judge or Court handling the proceedings.

Final Provisions

First: The Minister of Labor is hereby charged with the enforcement of this law.

Second: All legal and regulatory provisions found to be in conflict with this law, which will take effect on the date of the publication thereof in the Official Gazette of the Republic, are hereby derogated.

Done at the Presidential Palace, in Havana, on this 24th of November, 1959.

Osvaldo Dorticos Torrado
Fidel Castro Ruz,
Prime Minister.

Augusto R. Martinez Sanchez,
Minister of Labor.

(Official Gazette No. 224 of November 25, 1959)

Appendix

(CUBAN LAW NO. 843)

(Translation from Spanish)

OFFICIAL GAZETTE HAVANA, PUBLISHED JULY 6, 1960

Law No. 843.

Amendment to the INTERVENTION LAW (647) of November 24, 1959.

I, OSVALDO DORTICOS TORRADO, President of the Republic of Cuba.

Proclaim: That the Council of Ministers has agreed and I have sanctioned the following:

WHEREAS: Law Number 647 of November 24, 1959, published in the OFFICIAL GAZETTE of the 25 day of the same month, empowers the Minister of Labor, by the procedures laid down therein and in the cases contemplated in its Article II, to proceed to intervention of Enterprises or Centers of Labor in which the normal course of production is obviously impaired.

WHEREAS: It has been observed that various court proceedings are pending against various intervened enterprises or centers of labor, by virtue of obligations contracted by them before the Intervention Orders; in which proceedings, if the decisions handed down therein were put into effect, the intervention might be rendered ineffectual and the closing of the centers of labor might ensue.

WHEREAS: Article 222 of the Constitution of the Republic states that it is the duty of the State to orient the nation's economy for the benefit of the people, wherefore, in compliance with this principle, it is fitting to order what

Appendix

measures may be called for, such as seeing to it that the goals of the interventions are attained, suspending execution of the court decisions ordered against interested enterprises.

WHEREAS: At the present time many intervened centers of labor need to have the interventions that have been ordered extended therein, since the reasons for ordering them persist, which renders it unnecessary for such extension to be specially ordered for each of them, if a general procedure can be followed.

Therefore: By virtue of the powers vested in it, the Council of Ministers has decided to proclaim the following:

LAW NO. 843.

Article 1—Article Four of Law Number 647 of November 24, 1959 is amended to read as follows:

Article Four: The term set for the duration of interventions ordered by the Minister of Labor, pursuant to the provisions of the present Law, may be extended as many times as may be necessary to attain the purposes of the intervention, by a Decision of Minister of Labor.

Article 2—The courts shall not issue any executory decree against enterprises that have been intervened by the State, so long as the intervention is in effect, for obligations contracted prior to the date on which intervention was ordered.

TRANSITIONAL CLAUSES

First: The Minister of Labor may, by appropriate Decisions, extend interventions ordered under Law No. 647 of November 24, 1959, prior to the entry into force of this Law,

when so required for attaining the purposes of the intervention.

Second: Court proceedings in the course of execution at the time this Law is promulgated, and directed against enterprises which are intervened by the State, shall be interrupted at the point they have reached, so long as the intervention is in force.

Court proceedings which have not reached the stage of execution shall be continued until that phase of procedure, at which they shall be suspended, so long as the intervention is in force.

EXECUTORY CLAUSE

Any provisions of the law or regulations contrary to the provisions of the present Law are repealed, and the present law shall go into effect from the time of its publication in the OFFICIAL GAZETTE of the Republic.

WHEREFORE: I order that the present Law be complied with and enforced in all its parts.

GIVEN in the Presidential Palace, in Havana, on June 30, 1960.

OSVALDO DORTICOS TORRADO
FIDEL CASTRO RUZ,
Prime Minister.

AUGUSTO R. MARTINEZ SANCHEZ,
Minister of Labor.

mr/ap.

(Resolution No. 20260)

REPUBLIC OF CUBA

MINISTRY OF LABOR

GRACIELA TASENDE MUNECAS
Head of the Office of the Minister of Labor
Name and Post of the Official

CERTIFYING: That by the Minister of Labor ————————
on a matter related to the Departmente ————————
has been dictated the following

RESOLUTION N° 20260

Having seen the File No. 1156/60, settled under the Law 647 of November 24th., 1959 in the Intervention Department of this Ministry, and:

WHEREAS: The Legal Representation of the National Tobacco Federation of Labor has been denouncing to this Ministry the crisis created in its sector as a consequence of the policy carried out by the cigar and cigarette manufacturers and tobacco leaf wholesalers, which has provoked a considerable shrinkage or the production, the displacement of a great number of laborers and serious injury to the national economy.

WHEREAS: It is evident the attitude or selfishness and open hostility to the economic development of the nation, adopted by the employers of the tobacco sector with the development of a narrow commercial policy viewing only the obtention of greater profits—for their personal lucre, diminishing extraordinarily the production for internal consumption, as well as that destined for export to the natural

markets of Cuba, a dimunition exceeding 15 million units in the first semester of the current year, as a consequence of the excessive increase of the prices.

WHEREAS: The employers' attitude attempting against the economic interests of the country and of the laborers has had no limits and has been shown in all the aspects in connection with production, from the sale of the raw material they should have on deposit to manufacture the several types of blend, the refusal to acquire the one corresponding to the new crops, the total neglect of the several departments of the factories, have brought as a consequence a considerable shrinkage in the quality of the product that has been losing not only prestige but the markets in the habitual countries.

WHEREAS: The withdrawal of the operating capital from the industries by the employers has contributed, besides, to the ostensible restriction and limitation of production, exclusively developing their activities on the basis of loans mainly from the State, which determines that the employers' attitude is consciously directed to provoke a situation of disorganization and stagnation of the industry with the consequent injury which same represents.

WHEREAS: The cigarette enterprises as well as other tobacco-magnates have participated in the resistance to raise the new crop, to buy raw material and apply their own economic resources for the development of their activities, having on their side, as allies, the great wholesalers of tobacco leaf.

WHEREAS: Some of these employers have abandoned their businesses and have absented themselves from the national territory leaving numerous debts and jobless labor-

ers, which constitutes an increase in the problematic situation of unemployment which the Revolutionary Government and mainly this Ministry should avoid.

WHEREAS: It becomes necessary to guarantee the supplies to the habitual markets of Cuba, producing tobacco with the quality that has always distinguished the Havana tobacco, for all of which it is imperative that the Revolutionary Government adopts the necessary measures in order to normalize the situation created in the national cigar and cigarette industry, securing the stability of the laborers in their jobs and the production in general, therefore it proceeds to decree the intervention of the laboring centers in which the facts stated in the preceding Whereases occur, and which are:

CIGAR FACTORIES: Hijos de J. Cano y Cia., sita en San Gabriel No. 301, Cerro; Castañeda, Montero, Fonseca, S.A., Galiano No. 466 Habana; Cifuentes y Cía., Industria No. 520, Habana; Menéndez, García y Cía., Ltda., Amistad No. 407, Habana; F. Palicio y Cía. Máximo Gómez No. 51, Habana; Romeo y Julieta Fábrica de Tabacos S.A., Padre Varela No. 152, Habana; Tabacalera Cubana S.A., Agramonte No. 106, Habana; Tabacalera Pita Hnos. S.A., Estévez No. 67, Habana; Por Larrañaga, S.A., Carlos III No. 713, Habana; Tabacalera José L. Piedra S.A., Avenida 57 No. 13402, Marianao; Martínez y Cía., Avenida 51 No. 13606, Marianao; Tabacalera Moya S.A., Bayamo, Oriente; Bauzá y Yanes, Agramente y República Cabaiguán, Las Villas; Rey del Mundo Cigar Co., Padre Varela No. 852, Habana; Villaamil Santalla y Cía., República No. 2118, Artemisa. P. del Río; A. Quintero y Cía. S.L., D'Clouet 16-18, Cienfuegos. CIGARETTE FACTORIES: Hijos de Domingo Méndez, Clavel No. 13, Habana, Torres GenerHnos. S.A.,

Máximo Gómez No. 51 Habana; Calixto López y Cía., Agramonte 702, Habana; Cigarros H. Upmann S.A., Ave. 20 de Mayo No. 520, Habana; Villaamil SantaIla y Cía. S.L., Campanario No. 1002; Trinidad Hnos. S.A., Ranchuelos, L.V.; Tabacalera Cubana, S.A., Princesa No. 202, Habana Sres. Ramón Rodríguez e Hijos, S. en C., 23 No. 1255, Vedado, Habana; Cía Inmobiliaria Arroyo Arenas S.A., Arroyo Arenas, Habana; Azan y Hnos., Zayas y Crombet, Santa Clara, Las Villas; Trinidad Industrial S.A., Santo Domingo No. 95, Trinidad, L.V.; Cigarrera Nacional S.A., Antonio Maceo y San Mateo, Santa Clara, L.V.; Fábrica de Cigarros Camagüey S.A., Camagüey; Distribuidora Montemann S.A., Ave. 20 de Mayo No. 520, Habana. Tobacco Leaf Warehouses: Cuba Tobacco S.A., Figuras No. 109, Habana; S. Ruppin Havana Tobacco Co. Inc., Carlos III No. 613, Habana; Rothschild-Samuel-Duignan, S.A., (Havana Tobacco), Dragones No. 108, Habana; J. B. Diaz y Cía., Pasco de Martí No. 115, Habana; Leslie Pantin & Son Escobar No. 451, Habana; Toraño y Cía., Estrella No. 157, Habana; Tabacalera Hijos de Diego Montero S.A., Figuras No. 182, Habana; Cueto Toraño y Cía., Enrique Barnet No. 109, Habana; Junco y Cía, Lealtad No. 1013, Habana; H. Duys Co., Havana Tobacco S.A., Cable Nueva No. 75, Habana; García y Vega, Virtudes No. 256, Habana; Tabacalera Severiano Jorge S.A., Amistad No. 360, Habana; José Toraño y Cía., Avenida Simón Bolívar No. 152, Habana; Cía. Tabacalera del Caribe S.A., Industria y Barcelona, Habana; Domingo Méndez y Cía., Cárdenas No. 115, Habana; Cuban Land and Leaf Tobacco Co., Agramonte No. 106 y Luyané No. 204; Habana; Pollack y Compañía, S.A., San Carlos No. 816 Habana; Liduvino Vizcaíno Valdés, Estrella No. 610, Habana; Menéndez y Cía, S.L., Calle 24 No. 112 entre 11 y 13, Vedado, Habana; Menéndez y Cía., Amistad No. 405, Habana; Menéndez y Cía., Salud No. 59; Habana; Samuel Gordon y Compañía

S.L., Lealtad No. 612, Habana; Standard Havana Tobacco Co., Antonio Maceo No. 164 Santa Clara, L.V.

Whereas: Having heard the opinion of the Central Planning Board and in use of the faculties granted me by the Law 647 of November 24th, 1959, modified in its 4th Article by Law 843 of June 30th, 1960.

I Resolve:

First: Order the intervention of the entities detailed in the last Whereas of this Resolution, for the term of a year.

Second: Appointing as Interventors of this Ministry in the referred to entities: Onelio Quiñones Gonzáles en Hijos de J. Canjo y Cía., sita en San Gabriel No. 301, Cerro, Habana; Narciso Quintana Rivas, en Castañeda, Montero, Fonesca, S.A., Industria 520, Habana. Orlando Montesino en Menéndez García y Cía. Ltda. Amistad 407, Habana; Manuel Salgado en F. Palicio y Cía., S.A., Máximo Gómez No. 51, Habana; Alfredo Cañal en Romeo y Julieta, Fábrica de Tabacos, S.A., Padre Varela 152, Habana; Pedro Ramirez en Tabacalera Cubana S.A., Agramonte 106, Habana; Reinaldo Legón en Tabacalera Pita Hnos. S.A., Estevez 67, Habana; Calixto Rodríguez en Por Larrañaga S.A., Carlos III No. 713, Habana; Oscar Zamora en Tabacalera José L. Piedra S.A., Ave. 57 No. 13402, Marianao; Laureano León en Martínez y Cía., Avenida 51 No. 13606, Marianao; Abdón Honet Perich en Tabacalera Moya S.A., Bayamo; Manuel Cáceres en Bauzá y Yanes, Agramonte y República, Cabaiguán: Reineiro Echeva ría en Rel del Mundo Cigar Co., Padre Varela 852, Habana; Rogoberto Sancho en Villaamil S. Santalla y Cía., República 2118, Artemisa; Fermín Hejas en A. Quintero y Cía. S.L., D'Clouet 16-18,

Cienfuegos, L.V.; Blanco Vázquez en Hijos de Domingo Méndez, Clavel No. 13, Habana; Francisco Carballo Hernández en Torres Gener Hnos. S.A., Máximo Gómez 51 Habana; Hilario de Armas en Calixto López y Cía., Agramonte 702, Habana; Orlando Perras en Cigarros H. Upmann, S.A., 20 de Mayo 520, Habana; Arturo Menéndez en Villamil Santalla y Cía., S.L., Camapanario 1002, Habana; Santiago Padrón Perez en Trinidad y Hnos. S.A., Ranchuelo, Las Villas; Máximo no Arias en Tabacalera Cubana S.A., Princesa 202, Habana; Dionisio Monteagudo Ledón en Sres. Ramón Rodríguez e Hijos, S. en C., 23 No. 1255, Vedado, y en Cía., Inmobiliaria Arroyo Arenas S.A.; Nelson Peña Gómez en Azan y Hnos., Zayas y Crombet, Santa Clara, y en Cigarrera Nacional S.A., Antonio Macco y San Mateo, Santa Clara; José Luis Pajón en Trinidad Industrial S.A., Santo Domingo 95, Trinidad, Las Villas; Francisco Hernández Maidagon en Fábrica de Cigarros Camagüey S.A., Camagüey; Francisco Sánchez en Distribuidora Montemann S.A., 20 de Mayo 520, Habana; Armando Lobeto Alvarez en Cuba Tobacco S.A., Figuras 109, Habana; S. Ruppin Havana Tobacco Co. Inc., Carlos III No. 613, Habana; Rothschild-Samuel-Duignan, S.A., Havana Tobacco, Dragones 108, Habana; J. B. Díaz y Cía., Paseo de Martí 615, Habana; Leslie Pantin & Son, Escobar 451, Habana; Torano y Cía., Estrella 157, Habana; Tabacalera Hijos de Diego Montero S.A., Figuras 182, Habana; Cueto Toraño y Cía., Enrique Barnte 109, Habana; Junco y Cía., Lealtad 1013, Habana; García y Vega, Virtudes 256, Habana; Tabacalera Severiano Jorgge S.A., Amistad 360, Habana; José Teraño y Cía., Avenida Simón Bolívar 152, Habana; Cía. Tabacalera del Caribe S.A., Industria y Barcelona, Habana; Domingo Méndez y Cía., Cárdenas 115, Habana; Cuban Land & Leaf Tobacco Co.,

Agramonte 106 y Luyanó 204 Habana; Pollack y Cía. S.A., San Carlos 816, Habana; Liduvino Vizcaino Valdés, Estrella 610, Habana; Menéndez y Cía. S.L., Calle 24 No. 112 entre 11 y 13, Vedado, Habana; Menéndez y Cía., Amistad, 405, Habana; Menéndez y Cái., Salud 59, Habana; Samuel-Gordon y Cía. S.L., Lealtad 112, Habana; Standard Havana Tobacco Co., Antonio Macco 114, Santa Clara, Las Villas.

Third: Subrogate in the place and degree of the Management of the intervened entities the appointed Interventors, with faculties to open bank accounts; accept, endorse, discount, or in any other way negotiate bills, letters or any other mercantile documents; solicit and obtain credits; perform operations of purchase or sale of national or foreign holdings; borrow money with or without guarantee, stipulating type of interest, expiration, place of payment, type of money and all other particulars which he deems convenient; negotiate when he thinks it is timely the overdrafts in current accounts; pignorate, mortgage or in any way encumber any assets belonging to the Enterprise; buy, change or sell or in any other way operate in or with stocks, bonds, and other securities; rent safe deposit boxes, depositing in same and freely withdrawing its contents; negotiate working conditions with the laborers and employees of the Enterprises, as well as subscribing collective labor agreements on behalf of same; pay the payrolls of employees and laborers; to represent the Enterprises legally in and outside of court, and any other faculty deemed necessary for the development of their operations.

Fourth: Order the appointed Interventors to take inventory of and appraise the goods and chattels belonging to the intervened Enterprises.

Appendix

Fifth: Notify the parties according to law.

Issued in Havana, Ministry of Labor, to

August R. Martínez Sànchez
Minister of Labor

And to notify .....

I issue the present writing, in .....

to .....